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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re S.S., et al.,

Persons Coming Under the Juvenile Court Law.

B208477

(Los Angeles County  
Super. Ct. No. CK53870)

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

DENISE N.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Sherri Sobel, Referee. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Byron G. Shibata, Associate County Counsel, for Plaintiff and Respondent.

## INTRODUCTION

Denise N. (Mother) appeals from jurisdictional and dispositional orders made by the juvenile court at a hearing on a supplemental petition filed pursuant to Welfare and Institutions Code section 387<sup>1</sup> as to her children, who had been adjudged dependents of the court pursuant to a section 300 petition filed two years earlier. Mother had received 18 months of family reunification services, at the end of which the court ordered them returned to her physical custody. However, after only a few months, the Los Angeles County Department of Children and Family Services (DCFS) filed the section 387 supplemental petition, alleging that the previous disposition placing the children in Mother's custody was not effective in protecting the children. Mother argues on appeal that substantial evidence did not exist to support that allegation, or to establish that returning the children to her custody presented a substantial risk of danger to their physical or emotional well-being, and no reasonable means to protect the children existed, short of removal from her custody. She bases these contentions on the argument that DCFS failed to provide her with reasonable family reunification services to address her mental illness which would have enabled her to comply with the court-ordered case plan. We find no merit in any of Mother's contentions on appeal, and affirm the challenged orders.

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<sup>1</sup> All further undesignated statutory references are to the Welfare and Institutions Code.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *The February 2006 Referral, and the Subsequent Detention of the Children in May 2006*

DCFS received a referral in February 2006 asserting that Mother was neglecting her son D.N. (born in August 1992), her daughter S.N. (born in May 2003),<sup>2</sup> and her son S.S., Jr. (born in August 2004).<sup>3</sup> This was the second time DCFS had become involved with the family. In November 2003, DCFS had filed a section 300 petition alleging that Mother was unable to adequately care for her daughter, S.N., who suffered from a serious lung condition which required extensive medical care. The child was detained and placed in out of home care, but was returned to Mother's custody in late January 2004 after Mother completed training and demonstrated her ability to care for the child.

The February 2006 referral stated that the children's hygiene was poor and the home was filthy. Mother reportedly was failing to take S.N. to her medical appointments. In early March 2006, a voluntary family maintenance plan was initiated. Mother was required to clean up the home, enroll D.N. in school, and consult her psychiatrist and take any medication prescribed for her. However, Mother failed to comply with the plan and the children were detained in late May 2006, and placed with the maternal grandmother.

In the May 2006 detention report, DCFS indicated that Mother suffered from mental health problems that prevented her from providing the children with their

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<sup>2</sup> The daughter is sometimes referred to in the record with the last initial, S.; however, to differentiate her from her younger brother, S.S., we refer to her as S.N.

<sup>3</sup> D.N. is currently placed with Mother and is not a subject of this appeal. F.S., the father of D.N. and S.N., and S.S.'s father are not parties to this appeal.

basic needs. Mother had been diagnosed with bipolar disorder and depression in 2005. The family home was dirty, cluttered with clothes and trash, and hazardous for the two young children, S.N. and S.S. Mother had not enrolled D.N. in school since 2004 (he was 14 years old in 2006), and the boy appeared withdrawn, depressed, and isolated. His personal hygiene was poor. DCFS was unable to determine Mother's mental health status because Mother did not follow through with seeking care at the Department of Mental Health in Hollywood, even though Mother told the social worker she was participating in a program there. Mother blamed her failure to adhere to the family maintenance plan on being too busy because of all of her appointments, and on others failing to help her enroll D.N. in school and clean her home.

*The June 2006 Section 300 Petition, Adjudication, and Disposition*

DCFS filed a section 300 petition on June 5, 2006. Therein, DCFS alleged that Mother suffered from mental and emotional problems that endangered the children's physical and emotional health, that the family home was in an unsanitary condition that endangered the children's health, and that Mother failed to participate in psychiatric counseling and enroll D.N. in school as required by the voluntary family maintenance agreement. The petition further alleged that S.N. was a former dependent due to medical neglect, and that prior services had failed to resolve the underlying problems because Mother had not addressed her mental health issues. The children were ordered detained and suitably placed with their maternal grandmother. DCFS was ordered to provide family reunification services. Mother was ordered to take any medications prescribed for her. D.N. was to participate in individual counseling and be enrolled in school. S.N. was already a client of the Regional Center and the court ordered her services

transferred to a location near her new placement. The court ordered that the youngest boy, S.S., be referred to the Regional Center for evaluation. Mother was granted monitored visits with S.N. and S.S., and unmonitored visits with D.N.

The maternal grandmother told DCFS that in fact she had already been caring for the two younger children, S.N. and S.S., in her home for a few years. Mother and D.N. stayed with her only occasionally and otherwise lived in shelters.

D.N. told the social worker that Mother was depressed, and would sometimes cry about things, and that this could happen at any time. He felt that Mother was trying, but that nobody was helping them. His aunts attempted to help clean up their home, but threw away important documents that Mother needed to keep. He felt Mother never had time to clean up the house and get organized, because she had many scheduled appointments, such as for counseling. D.N. said he is dyslexic, and that Mother was trying to get him enrolled in a private school. However, given his younger sister S.N.'s health problems and Mother's relationship problems with S.S.'s father, Mother was having difficulty doing so. D.N. was extremely protective of Mother.

Mother reported that she was diagnosed with depression when she was pregnant with S.N., but had never been prescribed psychotropic medication. She was involved in counseling from 2001 to 2003. She acknowledged her home was cluttered, filthy, and unsanitary, and that she was again suffering from depression. She therefore asked her mother to take care of her two younger children. She said she was receiving counseling at Hollywood Mental Health. Regarding D.N., she said that no school would take him because his Individualized Education Plan was too complicated. She also said she took him out of public school because he was being bullied. She described him as being depressed and withdrawn, and said he did not want to socialize with others. She had found a private school for him, and

was trying to get the public school system to pay for his private education. She was working with a school district attorney to get D.N. placed in school.

S.N. suffers from chronic lung disease, developmental delays, and brain damage; she is unable to speak. DCFS reported that she was a client of the Regional Center. S.S. appeared to be developing normally.

The DCFS social worker spoke to a case manager at the Department of Mental Health in Hollywood, who said Mother had an intake assessment in early March 2006 and was diagnosed with “mood disorder NOS.” Medication was recommended, but Mother requested that a blood test be done first (apparently to demonstrate that she did not abuse drugs). The case manager did not meet with Mother until May 12, 2006. Mother did not tell the case manager that she was having difficulty setting up appointments with a psychiatrist. The case manager could not comment on Mother’s mental health status and the safety of the children because her contact with Mother had been minimal.

Life Steps Foundation was enlisted in early April 2006 to assist Mother with cleaning her apartment. However, a worker from Life Steps told the DCFS social worker that Mother would not allow the agency staff to come into her home. The worker was able to look into the home and saw that it was filthy and cluttered.

The social worker noted that Mother presents as an intelligent, articulate woman, who had graduated from college. She is caring, loving, and nurturing with her children. It was unclear to the social worker what barriers were causing Mother to fail to follow through with cleaning her house and enrolling D.N. in school. She appeared motivated, but was unable to concentrate on more than one task at a time and follow through on obtaining help.

The adjudication hearing was held on July 19, 2006, at which time the court sustained the section 300 petition as amended. The court determined that the

Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) was likely to be applicable, based on Mother having Cherokee heritage.<sup>4</sup> The matter was continued for disposition until August 8, 2006, to allow time for the children's tribe to become involved in the proceedings. On July 20, 2006, the court ordered Regional Center referrals for S.N. and Mother, ordered DCFS to assist Mother with getting In-Home Supportive Services, and ordered an Evidence Code section 730 evaluation of Mother and D.N.

On August 8, 2006, the court confirmed that the ICWA applied to this case. It therefore ordered that services (including the Evid. Code, § 730 evaluation previously ordered) would be provided to the family through the United American Indian Involvement Family Preservation Services (UAI), or through Los Angeles County Mental Health Indian Services. The court found by clear and convincing evidence that returning the children to Mother would create a substantial risk of danger, and that no reasonable means to protect them existed short of removal from Mother's physical custody. The court noted that the children were in a preferred ICWA placement because they were in the custody of the maternal grandmother. Mother was ordered to participate in individual counseling, and to seek a psychiatric consultation and comply with taking her medication, if any were prescribed.

#### *The January 2007 Six-Month Review Hearing*

DCFS reported that Mother was referred to UAI in December 2006, but because she had started a new job and was on probation, she was unable to request

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<sup>4</sup> Effective January 1, 2007, California codified into the Welfare and Institutions Code, with some modifications, the provisions of the federal ICWA. (Welf. & Inst. Code, §§ 224 et seq.)

time off to meet with UAII in order to begin receiving services. Mother indicated to the DCFS social worker that her main concern was finding housing, and the social worker agreed to work with UAII and other resources to assist in locating housing for her. UAII offered a broad range of services, including various family activities, support groups, food stamps and restaurant meals, free health clinics, housing assistance, parenting training and substitute role-modeling, and in-home outreach counseling. The UAII worker told DCFS that Mother expressed willingness to use the services provided by UAII, but her inability to take time off from work resulted in the case planning meeting being cancelled. UAII was attempting to reschedule with Mother. Mother had begun receiving unspecified “counseling services” with the GAIN program through the Department of Public and Social Services.

Mother’s Regional Center evaluation indicated that she did not have a developmental disability (i.e., suffer from mental retardation or a similar condition) as defined in section 4512, and was thus not eligible for Regional Center services.

Mother underwent a thorough psychological evaluation in September 2006. The clinical psychologist had reviewed a psychiatric assessment report from June 2005 diagnosing Mother with depressive disorder, not otherwise specified (NOS), and personality disorder, NOS. At the time of the current assessment, Mother tested within the high average range in overall intelligence, and her verbal scores also fell within the high average range. However, she displayed difficulty concentrating, poor frustration tolerance, and perfectionism, which negatively affected her performance in the testing. Her arithmetical reasoning skills and ability to perform calculations were markedly inferior, falling in the low-average range. She displayed significant anxiety during the assessment, and demonstrated a lack of self-confidence, underlying insecurity, and intermittent apathy. These



factors hindered her coping skills and self-sufficiency. Although her judgment was generally adequate, she lacked insight into her problems, and displayed denial, projective identification and rationalizations, and tended to blame others for her difficulties. Her self-care and adaptive daily living skills fell within the average range; she exhibited relatively deficient coping skills and self-sufficiency.

The psychologist's diagnosis was dysthymic disorder, early onset, moderate; major depressive disorder, unspecified; and personality disorder NOS. Mother suffered chronic problems and difficulties, intertwined with periods of depression during which she experienced hopelessness and helplessness. She had never become psychotically disorganized or suicidal, but she had experienced functional limitations and regressions, especially in the area of caring for her children and maintaining her household, and she was further impacted by limited finances.

The psychologist reported that "due to her depression and long standing issues and difficulties her financial self-sufficiency and relationships have been compromised to such an extent that also having children with some developmental problems and needs may have furthered her inability to care for her children adequately resulting in further depression [e]specially after the removal of her children from her custody, as a result of which she also had become homeless." She continued to be actively involved in her children's care on a daily basis, spending the whole day with them at her mother's house, but ordinarily returning to a shelter at night. The psychologist opined, however, that given her relatively high cognitive ability, she demonstrated the potential "to benefit from intensive insight oriented cognitive behavioral psychotherapy services, provided that such services are made available to her and she conscientiously follows the prescribed therapeutic sessions and suggestions appropriately with determination and consistency." "[H]er dynamic affective and personality related issues need

intensive psychotherapeutic services. Although she still feels that medications are not the answer for her problems, in the future if her depressive manifestations persist, once again an evaluation should be considered, as the combination of psychotherapy and psychiatric care is clinically known to yield optimal results, progress and improvements.”

The social worker reported that Mother was making progress toward reunification. She was employed, visiting the children consistently, and seeking housing. However, she had not completed any program to help her overcome her past behavioral issues. DCFS believed that once the proper services were provided to her with DCFS assistance, based upon the recommendations made in the psychological assessment, she would be able to reunify with the children.

At the six-month review hearing (§ 366.21, subd. (e)) , the court found that DCFS had provided reasonable services, and that Mother was in substantial compliance with the case plan. Accordingly, the court ordered that Mother should be provided with six additional months of reunification services. The court directed DCFS to discuss with the maternal grandmother the possibility of Mother living in the maternal grandmother’s home. Counsel for DCFS requested that Mother’s therapist be given a copy of the psychological evaluation, and that Mother provide verification that the therapist was properly licensed to provide the needed services.

#### *The July 2007, 12-Month Review Hearing*

DCFS reported that D.N. was enrolled in school, although apparently he had been enrolled in a school in the wrong geographical district. The two younger children were doing well in the care of the maternal grandmother. Mother had made efforts to obtain housing, but without success. She visited the children

consistently, and sometimes stayed overnight at the maternal grandmother's home during weekends. Mother had participated in resolving D.N.'s educational issues. Mother had enrolled in counseling at the American Indian Counseling Center. Her therapist reported that Mother's sessions were very positive, but her attendance was irregular, and she had not been to therapy for the previous two weeks. DCFS assessed that the risk of detriment to the children remained high if reunification were to occur, because Mother had not reached the level of stability required to provide a safe environment for the children. However, DCFS recommended that family reunification services be continued for another six-month period. Accordingly, the court ordered that reunification services be continued through December 2007, finding that Mother was in compliance with the case plan, and that DCFS had made reasonable efforts to assist in reunifying the family.

#### *The December 2007, 18-Month Review Hearing*

DCFS reported for the 18-month review hearing (§ 366.22) that Mother still did not have housing; the social worker had attempted to assist her in securing housing through the Salvation Army and the City of Los Angeles, but none was available. She continued to visit the children consistently and assist with their care.

Mother's therapist at the Los Angeles County American Indian Counseling Center reported on November 30, 2007, that since September 2007 when Mother was referred for more extensive services and intervention, she had made no progress in developing consistency and regularity with her counseling sessions. She had attended only seven sessions since September, although she was supposed to have weekly sessions. Securing housing was Mother's primary focus but she had been unsuccessful in that endeavor. She exhibited stress, anxiety, and constant

frustration. Mother showed minimal insight into her behavior. The therapist identified her psychological illness as “essentially one of projection.” She projected her difficulties onto others, and was suspicious of others, which thwarted her progress and made her ineffective in dealing with service agencies. Reducing her stress level and improving her ability to function efficiently were the therapist’s primary goals. Mother was, however, sincerely committed to reuniting with her children. During a telephone conversation with the social worker, the therapist stated that if Mother could secure housing, and had a strong support system, she could succeed in reunifying with her children.

In late May 2007, Mother had requested that S.N.’s Regional Center services be discontinued because she was involved in litigation with the Board of Education, and Mother felt that discontinuing S.N.’s Regional Center services was necessary. D.N. had been enrolled in school, but not in the Compton school district, in which the maternal grandmother’s home is located. Mother refused to enroll him in school there, citing safety concerns.

DCFS stated the family had stabilized to the point that reunification could occur. However, it did not recommend terminating jurisdiction, but rather implementing family maintenance services. To that end, the social worker had referred Mother to the family preservation program at UAII in November 2007. Because Mother did not have housing, the children were to remain living in the maternal grandmother’s home until Mother obtained housing, and Mother agreed to be financially responsible for the children and assist with their daily care. Mother had made active efforts to find housing, but given the number of children and the fact S.N. had severe disabilities, it was a difficult task and suitable housing was simply unavailable. DCFS did not want to penalize Mother by denying her reunification because she was homeless.

At the review hearing, the court found that DCFS had provided reasonable services, and that Mother had complied with the case plan. The court terminated the children's suitable placement order, and ordered them placed with Mother, conditioned upon Mother living with the maternal grandmother or in DCFS-approved housing. The court ordered DCFS to provide family maintenance services.

#### *Mother's Section 388 Petition*

On April 15, 2008, Mother filed a section 388 petition to modify the court's order requiring that she reside with the maternal grandmother or DCFS-approved housing. She also requested that her social worker be removed from her case, accusing him of lying to the court, and setting her up for failure. She alleged the social worker "blocked, denied, harassed, threatened, coerced, intimidated and refused to make referral calls or even provide court ordered . . . services." Mother withdrew the petition without prejudice, however, after DCFS agreed to assign a new social worker to the case.

#### *The April 2008 Section 387 Supplemental Petition*

On April 16, 2008, DCFS filed a section 387 supplemental petition alleging Mother had failed to comply with court orders, including participating in regular counseling and parenting classes. Mother still had not enrolled D.N. in school and S.N. was not receiving Regional Center services. A new allegation of general neglect had been made regarding Mother in early January 2008, and a new case plan had been established. Mother had failed to comply with that plan, which included among other things reestablishment of Regional Center services for S.N., placing D.N. in school, participation in individual and conjoint therapy, and

initiation of family preservation services. Mother was staying at the maternal grandmother's home with the children during the week, but Mother and D.N. were sleeping elsewhere during the weekends.

At the detention hearing, the court found that the prior order placing the children with Mother was inappropriate and failed to protect the children. The court found a prima facie case for detaining the children, as DCFS had made reasonable efforts to prevent the children's removal from Mother's custody. The court ordered S.N. and S.S. to be placed with the maternal grandmother, but released D.N. to Mother. The court further ordered DCFS to provide family reunification services for S.N. and S.S., and family maintenance services for D.N. The jurisdiction and disposition hearing was scheduled for May 2008.

DCFS reported that Mother remained homeless, and all three children were living with the maternal grandmother. The referral made in early January 2008 that Mother was neglecting the children had been made by a mandated reporter at the Union Rescue Mission Shelter, to which Mother had taken herself and the three children. DCFS and the shelter workers attempted to help Mother obtain housing at Hope Gardens in Sylmar, but Mother refused to cooperate, insisting it was too far from Los Angeles. S.N. still had not been reenrolled with the Regional Center. D.N. had recently been enrolled in high school.

The social worker opined that Mother's mental health problems had not been addressed comprehensively. She did not have an established diagnosis, and it was difficult to assist her with obtaining adequate mental health services. The maternal grandmother provided a strong support system for Mother and her children, but Mother's mental health problems had strained her relationship with family members and made it difficult for her to live with the maternal grandmother. Although highly intelligent, Mother remained unwilling to address her mental

health issues and receive proper treatment. She had been offered family preservation services, individual counseling, family therapy, transportation services, community advocacy, and parenting classes. She refused family preservation services, and discontinued her individual counseling.

The maternal grandmother was willing to serve as legal guardian for the children. DCFS recommended placement with the maternal grandmother, and initiation of legal guardianship or adoption proceedings.

At the hearing on May 7, 2008, a Court Appointed Special Advocate (CASA) worker confirmed that D.N. was enrolled in high school. On that basis, DCFS withdrew the section 387 petition with respect to D.N., and the court dismissed the section 387 petition as to D.N. only, ordering that he remain as placed with Mother.

The court found that DCFS had made reasonable efforts to preclude S.N. and S.S.'s removal from Mother's custody and to meet the children's needs. The court found pursuant to section 361, by clear and convincing evidence, that returning S.N. and S.S. to Mother would create a substantial risk of danger to their physical or emotional well-being, and that no reasonable means existed to protect them short of removal from parental custody. The court sustained the section 387 petition as to S.N. and S.S., found the previous disposition to be ineffective in protecting them, necessitating removal from parental custody, and terminated the previous order placing them with Mother. The court ordered family reunification and/or maintenance services terminated, and the children were ordered suitably placed with the maternal grandmother. The court stated that Mother had not been able to follow any of the prior orders regarding properly caring for her children in any way. She remained homeless, transient, and unable to cooperate with any of the people with whom she needed to cooperate. The court concluded that S.N. and

S.S. were not adoptable, but that the maternal grandmother was amenable to legal guardianship. Mother was granted monitored visits at least three times per week. A legal guardianship hearing was scheduled for June 2008.

On June 3, 2008, Mother filed notice of her intent to file a petition for extraordinary writ challenging the court's orders of May 7, 2008.<sup>5</sup> On July 7, 2008, Mother also filed a notice of appeal challenging the orders of May 7, 2008.

## **DISCUSSION**

Mother contends on appeal that there was no substantial evidence to support the juvenile court's findings and orders of May 7, 2008, by which the court sustained the section 387 supplemental petition and ordered the removal of S.N. and S.S. from Mother's physical custody. According to Mother, "[t]he primary reason that the section 387 jurisdictional finding was not supported by substantial evidence was that DCFS failed to provide reasonable reunification services to adequately meet Mother's mental health needs so that she would be able to comply with her case plan." Mother's argument on appeal, which is based on DCFS's supposed failure to provide reasonable reunifications services, is erroneously formulated and wholly unpersuasive. The analysis of whether substantial evidence exists to support removal of dependent children from parental custody pursuant to a section 387 petition does not involve consideration of whether reasonable reunification services were provided; the adequacy of services is analytically a separate issue. In considering removal from parental custody on a section 387 petition, the court considers whether the previous disposition as to custody was ineffective in protecting the children, whether the children are at risk if they remain

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<sup>5</sup> This court elected to construe the notice to file a writ petition as a notice of appeal.



in parental custody, and whether removal from parental custody is required. If a parent has failed to comply with her case plan, thus rendering her ineffective in protecting the children and placing them at risk and necessitating removal, she may argue, as does Mother, that her failure to protect the children was caused by the inadequacy of the reunification services provided. But making such an argument essentially concedes that a parent has failed to meet the requirements set forth by the court as being necessary to suitably care for and protect the children. Arguing inadequacy of services therefore does not refute the assertion that placing the children in Mother's custody was ineffective in protecting them; indeed, it virtually confirms it.

We first briefly set forth the statutory procedure a juvenile court must follow in removing a child from parental custody pursuant to a section 387 petition. Part of that process includes consideration of the adequacy of services because a court must evaluate whether reasonable efforts were made to prevent removal of a child from parental custody when conducting a disposition hearing potentially involving that issue (see § 361, subd. (d); Cal. Rules of Court, rule 5.695(e)).<sup>6</sup> Thus, we address the adequacy of services issue. We then address whether the court's jurisdictional and dispositional findings on the section 387 petition were supported by substantial evidence.

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<sup>6</sup> Here, Mother received family reunification services (for 18 months), at the end of which the children were returned briefly to her physical custody. DCFS determined the effort to reunite the family to be unsuccessful, and filed the section 387 petition. Evaluating whether reasonable efforts were made to prevent the children's removal from her custody was, under these circumstances, synonymous with evaluating the adequacy of the reunification services provided during the proceedings (and the family maintenance services offered when Mother regained custody).

## I. THE REQUIRED STATUTORY PROCEDURE

The orders at issue in this appeal were made as a result of DCFS's filing of a section 387 supplemental petition shortly after it had returned the children to Mother's physical custody at the 18-month review hearing. Section 387 applies whenever the juvenile court changes or modifies a previous placement order by removing a child from the physical custody of a parent and directing a more restrictive level of placement. (*In re Joel H.* (1993) 19 Cal.App.4th 1185, 1199.) "The supplemental petition shall be filed by the social worker . . . and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the child." (§ 387, subd. (b).)

A bifurcated hearing is required. (*In re Jonique W.* (1994) 26 Cal.App.4th 685, 691.) The first phase is a jurisdictional hearing, at which the court must determine whether the factual allegations of the supplemental petition are true, and, if so, whether the allegation the previous disposition was ineffective in protecting the child is true. "The ultimate 'jurisdictional fact' necessary to modify a previous placement with a parent . . . is that the previous disposition has not been effective in the protection of the minor." (*Ibid.*)

The second phase is a dispositional hearing. (*Ibid.*) The standard for removal of a child from his or her parent's custody pursuant to a supplemental petition is the same as the standard that applies to the disposition of the section 300 petition. (*In re Paul E.* (1995) 39 Cal.App.4th 996, 999, 1001-1003.) Custody of a child cannot be taken from the parent unless the dependency court finds by clear and convincing evidence, under section 361, *inter alia*, that "[t]here is . . . a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the [child or would be] if the [child] were returned home,

and there are no reasonable means by which the [child's] physical health can be protected without removing the [child] from the [child's] parent[s'] . . . physical custody.” (§ 361, subd. (c)(1); see *In re Paul E.*, *supra*, 39 Cal.App.4th at pp. 999, 1001-1003.)

Section 361 further provides, in subdivision (d), that “[t]he court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home.” (See also Cal. Rules of Court, rule 5.695, subd. (e).) Because the crux of Mother’s argument on appeal is that DCFS did not provide her with reasonable reunification services which would have prevented the children’s removal from her custody, we first address that contention.

## **II. REASONABLENESS OF REUNIFICATION SERVICES**

When a finding that reunification services were adequate is challenged on appeal, we review it for substantial evidence. (*Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1158.)

Mother concedes that she did not comply with her case plan: she argues that DCFS failed to provide her with reasonable reunification services that would have enabled her to comply with her case plan. (See § 361, subd. (d) [“court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home”].) More specifically, she argues that DCFS “focused its efforts on getting Mother to carry out those requirements by her own devices,” and “failed to provide the essential services . . . that focused on assisting Mother to manage her mental illness so that she could achieve all of the elements of her case plan.” She contends that “the only direction [the court and DCFS] gave Mother was to carry out her case plan.”

Mother's contention is controverted by the record. DCFS social workers were directly involved in efforts to reenroll S.N. in a Regional Center. She underwent a thorough psychological evaluation which diagnosed her as suffering from dysthymic disorder, early onset, moderate; major depressive disorder, unspecified; and personality disorder NOS. The evaluator opined that Mother needed "intensive psychotherapeutic services." He presciently stated that she had the potential "to benefit from intensive insight oriented cognitive behavioral psychotherapy services, *provided that* such services are made available to her *and she conscientiously follows the prescribed therapeutic sessions and suggestions appropriately with determination and consistency.*" (Italics added.) The evaluator noted that Mother "fe[lt] that medications are not the answer for her problems," but pointed out that "the combination of psychotherapy and psychiatric care is clinically known to yield optimal results, progress and improvements." Despite this clear guidance, Mother continued to refuse to take any medication, and failed to regularly attend her weekly counseling appointments with the therapist to which DCFS referred her at the American Indian Counseling Center, who demonstrably understood Mother's mental health issues and particular needs. The therapist stated in his report to DCFS that his therapeutic focus was on developing consistency and regularity with her counseling sessions, helping Mother reduce her stress and anxiety, and on improving her ability to function efficiently and manage her affairs. However, he made clear in his report that Mother lacked insight into her emotional problems and tended instead to project her difficulties onto others, which thwarted her ability to benefit from the services offered to her.

When Mother regained custody of the children in December 2007, she was offered family preservation services, individual counseling, family therapy, transportation services, community advocacy, and parenting classes. She refused

family preservation services, and eventually discontinued her individual counseling.

The court found that DCFS had made reasonable efforts to preclude the children's removal from Mother's custody and to meet the children's needs. We find substantial evidence in the record that DCFS reasonably offered family reunification services to Mother, which were appropriate and targeted to assist with her particular mental health issues. However, Mother apparently was unable or unwilling to comply with the case plan. "Reunification services are voluntary . . . and an unwilling or indifferent parent cannot be forced to comply with them. [Citations.]" (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1365.) Although Mother was provided with appropriate referrals and began counseling, she attended irregularly, she never committed herself to the process, and eventually she stopped going altogether. DCFS was not required to take Mother "by the hand and escort [her] to and through classes or counseling sessions." (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5.) "The fact that a parent suffers from emotional problems does not excuse her from the statutory requirement of participating in a reunification plan, as some capacity to achieve the reunification goals is presumed. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 415.)" (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762-763 "[mother's] real problem was not a lack of services available but a lack of initiative to consistently take advantage of the services that were offered."].) Here, Mother's failure to utilize the offered services was due to Mother's unresponsiveness and lack of cooperation, rather than any fault of DCFS.

### **III. SUFFICIENCY OF THE EVIDENCE TO SUPPORT REMOVAL FROM CUSTODY**

Mother contends on appeal that there was no substantial evidence to support the juvenile court's findings and orders of May 7, 2008, which resulted in the removal of S.N. and S.S. from her physical custody. She argues that there was no evidence that the previous disposition as to custody was ineffective in protecting the children, no evidence that removal from Mother's custody was required, and no evidence that the children were at risk in her home. As previously discussed, she bases these assertions primarily on the argument that she was not provided with adequate reunification services. We have rejected that contention, and turn now to reviewing whether substantial evidence existed to support the court's findings and orders on the section 387 petition. The issue requires only brief discussion, as Mother has conceded that she did not comply with the requirements of the court-ordered case plan designed to ensure the safety and well-being of the children when they were returned to Mother's custody. We conclude that the juvenile court proceeded as appropriate, following the procedures applicable to the bifurcated hearings which follow upon the filing of a supplemental petition, and making proper findings based upon the substantive requirements of section 387.

#### *A. The Jurisdictional Findings*

"The ultimate 'jurisdictional fact' necessary to modify a previous placement with a parent . . . is that the previous disposition has not been effective in the protection of the minor." (*In re Jonique W.*, *supra*, 26 Cal.App.4th at p. 691.) Here, the court sustained the section 387 petition as to S.N. and S.S., and found the previous disposition returning them to Mother's custody to be ineffective in protecting them.

The children were returned to Mother's physical custody in December 2007, conditioned upon her residing with the maternal grandmother or in DCFS-approved housing. In January 2008, she took the children and went to the Union Rescue Mission Shelter (according to Mother, on the advice of her attorney), whereupon a shelter worker made a referral of general neglect to DCFS. Mother refused to cooperate with DCFS's efforts to obtain housing for her in Sylmar, insisting it was too far from Los Angeles. Mother had not enrolled S.N., who suffers from brain damage and severe developmental delays, in a Regional Center, even though the DCFS social worker and a CASA worker had attempted to assist her in doing so. S.N. had previously received services from a Regional Center, and had clearly benefited from such services. Mother refused to participate in family preservation services, and stopped participating in counseling. If permitted to remain in Mother's custody, the children would have joined her in her transient lifestyle, and would have received no educational assistance or family preservation services. In short, substantial evidence unquestionably exists to support the court's conclusion that placing the children in Mother's custody had not been effective in protecting them.

#### *B. The Dispositional Finding*

During the second, dispositional phase of the hearing on the section 387 petition, the court found, pursuant to section 361, by clear and convincing evidence, that returning S.N. and S.S. to Mother would create a substantial risk of danger to their physical or emotional well-being, and that no reasonable means existed to protect them short of removal from parental custody.

As described above, immediately upon obtaining custody of the children, Mother placed their physical and emotional well-being at substantial risk by

moving them from the maternal grandmother's home, refusing housing, discontinuing her counseling, and refusing family preservation services. Nonetheless, she argues that the court was required, pursuant to section 361, subdivision (c)(1), to consider, as a reasonable means to protect S.N. and S.S., the options of requiring her to live in the placement home, or allowing a nonoffending parent to retain custody once he or she presented a plan acceptable to the court demonstrating he or she would be able to protect the child from future harm. The court had already tried the option of requiring Mother to live in the maternal grandmother's home (the placement home) or at least in DCFS-approved housing, and Mother refused to comply with that requirement. Mother argues the court should have given her the opportunity to present the court with an acceptable plan. However, abundant evidence established that no reasonable means existed to protect the children short of removal from Mother's custody. Accordingly, we decline to reverse the order removing S.N. and S.S. from Mother's custody.

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## **DISPOSITION**

The orders are affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.